

1 IN THE UNITED STATES DISTRICT COURT

2 FOR THE DISTRICT OF NEW MEXICO

3

4 UNITED STATES OF AMERICA,

5 Plaintiff,

6 vs. CR-05-1849 JH

7 DANA JARVIS,

8 Defendant.

9

10 Transcript of Plea Hearing before The Honorable James A.
11 Parker, Senior United States District Judge, held in
12 Albuquerque, Bernalillo County, New Mexico, commencing on
13 Friday, November 21, 2009, at 3:35 p.m., and concluding at 4:29
14 p.m.

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14 For the Plaintiff: James R. W. Braun, Esq.

15 Stephen R. Kotz, Esq.

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18 For the Defendant: Judith A. Rosenstein, Esq.

19 Jody Neal-Post, Esq.

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1 (In open court.)

2 THE COURT: Good afternoon, court's in session. Have a
3 seat, please.

4 This is Number 2005-1849, United States of America
5 versus Dana Jarvis. Would counsel state their appearances,
6 please.

7 MR. BRAUN: Good afternoon, Your Honor, James Braun and
8 Steve Kotz on behalf of the United States.

9 MS. ROSENSTEIN: Good afternoon, Your Honor, Judith
10 Rosenstein and Jody Neal-Post on behalf of the defendant Dana
11 Jarvis.

12 THE COURT: I was asked by Judge Herrera to conduct the
13 change of plea hearing, and I had some concerns because I
14 participated at some length by consent of the parties in plea
15 mediation. I want to make sure there is no concern about my
16 presiding over the change of plea hearing.

17 MS. ROSENSTEIN: Actually, Ms. Neal-Post and I
18 discussed that with Mr. Jarvis, and he's waiving any objection
19 to having you hear the plea. In fact, he's very grateful to
20 the court for allowing him to plead before you.

21 THE COURT: Let me ask counsel for the government, do
22 you see any concerns about this?

23 MR. BRAUN: We did have some concerns, Your Honor, but
24 so long as the defendant himself waives any potential Rule 11
25 issue, we're okay with proceeding.

1 THE COURT: Well, there was a waiver of Rule 11 matters
2 in writing at the time of the mediation.

3 MR. BRAUN: Right. There was a formal waiver for those
4 purposes, and we would just ask that there be a verbal waiver
5 from the defendant himself as to any other issues that may be
6 raised by the court also handling this taking of the plea,
7 because that's not something that was contemplated in the
8 original written waiver.

9 THE COURT: That's correct. I don't intend to accept
10 the terms of the plea agreement today. I think I need to allow
11 the sentencing judge to do that. I can accept a plea of guilty
12 to the two counts.

13 MR. BRAUN: We understand that. We were going to ask
14 the court to formally accept the plea of guilty but not accept
15 the plea agreement until Judge Herrera reviews the PSR. To the
16 extent there might be some issues, we ask that the court get a
17 formal waiver of that from the defendant.

18 THE COURT: Let me ask Mr. Jarvis and his counsel to
19 come up to the microphone.

20 I'll ask Ms. Blumenthal to administer the oath to
21 Mr. Jarvis.

22 DANA JARVIS,
23 after having been duly sworn, testified as follows:

24 THE COURT: Mr. Jarvis, you're now under oath, and if
25 you give false answers to any questions I ask, they could be

1 used against you in prosecutions for perjury, false statement
2 or obstruction of justice. Do you understand?

3 MR. JARVIS: Yes, I do, Your Honor.

4 THE COURT: In the last 24 hours, have you had any
5 alcohol other any drugs?

6 MR. JARVIS: No, I haven't.

7 THE COURT: Are you under doctor's care at this time?

8 MR. JARVIS: No, I'm not.

9 THE COURT: And do you take any prescription medicines?

10 MR. JARVIS: No, I don't, Your Honor.

11 THE COURT: Is there anything about your mental
12 condition or your physical condition that makes it difficult
13 for you to understand these proceedings?

14 MR. JARVIS: No.

15 THE COURT: Now, if I ask a question that you do not
16 understand, would you please tell me?

17 MR. JARVIS: Yes, I will.

18 THE COURT: As you know, I participated in an effort to
19 mediate pleas with you and four other defendants in this case,
20 and we went through a lengthy procedure regarding consent to
21 that. I think it's appropriate to establish, however, that you
22 are comfortable with me presiding over your change of plea
23 hearing today. Is that acceptable to you?

24 MR. JARVIS: Yes, that's satisfactory, Your Honor.

25 THE COURT: Do you have any questions you want to ask

1 about that?

2 MR. JARVIS: No, I understand, and it's fine.

3 THE COURT: Okay.

4 MR. JARVIS: I'm not uncomfortable with it.

5 THE COURT: At most today, I would accept your pleas of
6 guilty, but I would not accept the terms of the plea agreement,
7 which is a Rule 11(c)(1)(C) agreement. That will be left to
8 the sentencing judge to decide whether to accept that or not.
9 Do you understand that?

10 MR. JARVIS: Yes, I do, Your Honor.

11 THE COURT: May I see the original of the plea
12 agreement?

13 Would you hand that to counsel?

14 Mr. Jarvis, is that your signature on page 10 of the
15 plea agreement?

16 MR. JARVIS: Yes, it is, sir.

17 THE COURT: And did you read this in its entirety
18 before you signed it?

19 MR. JARVIS: Yes, I did.

20 THE COURT: Did you discuss it with your counsel before
21 you signed it?

22 MR. JARVIS: We did.

23 THE COURT: And did you understand all of the
24 provisions of the plea agreement before you signed it?

25 MR. JARVIS: I understand what I read.

1 THE COURT: Well, is there anything that you did not
2 understand?

3 MR. JARVIS: Well, that's a hard question to answer,
4 Your Honor.

5 THE COURT: Well, I need to know whether you have made
6 a knowing plea today, and it is based on your plea agreement;
7 so if there is something you don't understand about it, we need
8 to explore that.

9 MR. JARVIS: Well, I guess the accurate answer to your
10 question is, yes, I do understand it. I read English, and I
11 read it through, and I understand the points that were made,
12 although I don't agree with all of those points, but I have
13 signed it and am willing to accept the terms of the agreement.

14 THE COURT: Well, I'm not sure what you disagree with,
15 but of particular importance is paragraph 8, the defendant's
16 factual basis.

17 MR. JARVIS: Well, that's the part right there.

18 THE COURT: That you have a problem with?

19 MR. JARVIS: Yes. There are some details in there that
20 are not facts, that are not accurate, that I don't feel
21 comfortable with, but -- well, the date factor and these
22 different states, for example, the mention of Ohio.

23 THE COURT: Okay, well, it's very important that this
24 be entirely accurate.

25 MR. JARVIS: Well, that's --

1 THE COURT: Because you're going to have to swear under
2 oath to the accuracy of this.

3 MR. JARVIS: It's close enough.

4 THE COURT: Well, if it's not accurate, we need to make
5 whatever modifications are necessary in order to allow you to
6 swear under oath, subject to penalties of perjury, that this is
7 correct.

8 MR. JARVIS: Well, I think it could be rewritten.

9 THE COURT: Why don't I give you time to meet with your
10 counsel to do that, and see if you can do it today.

11 MR. JARVIS: Well, I don't want to delay the
12 proceedings over this. I know that everybody has come here to
13 get this taken care of.

14 THE COURT: Well, notwithstanding that, it has to be
15 exact because you're swearing to this under oath.

16 Why don't I recess, let you meet with counsel for the
17 government and your counsel, and you can make whatever edits
18 you need to make to it to make it correct.

19 MR. JARVIS: Thank you, Your Honor.

20 THE COURT: We'll be in recess.

21 (Court recessed at 3:43 p.m. to 3:55 p.m.)

22 THE COURT: Court's in session. Have a seat, please.

23 Now, let me ask counsel and Mr. Jarvis, have you worked
24 out language in paragraph 8 that's satisfactory to both sides?

25 MS. ROSENSTEIN: Yes, and I'm not even sure where the

1 original is. The language itself is actually fine. There are
2 some other explanations that Mr. Jarvis would like to indicate
3 because he felt that it sounded like he was doing every, single
4 thing every day in all of those states, which is not accurate;
5 and, of course, for a conspiracy charge, it is not necessary
6 that you are involved in every state on every date.

7 THE COURT: Well, let me ask, is there a change in the
8 language in paragraph 8?

9 MS. ROSENSTEIN: I think what we're going to do is just
10 explain, from what I understand, Mr. Jarvis took a several-year
11 break at some point in the '90s and was not involved in any
12 type of drug conspiracy. I believe the government's discovery
13 and evidence would indicate that that is accurate, but that the
14 conspiracy started approximately 1990 and ended on the day of
15 his arrest, and that some of these locations, Mr. Jarvis has
16 never been to. But as this court is probably aware, there are
17 a lot of other people who were involved in this, some of
18 whom -- who are all involved in the conspiracy, whether at
19 Mr. Jarvis' direction or not, but part of the same organization
20 who were in fact in those states; and there is some involvement
21 in terms of what the conspiracy did in those states, just not
22 on a day-to-day, everyday basis for the 15 years that's covered
23 here.

24 MR. JARVIS: I was in all of those states.

25 MS. ROSENSTEIN: Oh, you were?

1 MR. JARVIS: Yes. But I was never -- I never went to
2 Ohio as part of this situation prior to 2000s, 2002, 2000,
3 somewhere around there. So that's what I had a problem with,
4 the 1990 -- from 1990 to 2002, I was never in Ohio. I never
5 went to Ohio, you see. It was a more recent situation. But I
6 think Judith has explained it to me, Jody as well, and I
7 understand how the nature of the conspiracy overlaps the
8 different time periods and how that relates to the different
9 locations, and I'm satisfied with the wording the way it is.
10 It's fine.

11 THE COURT: Let me ask Mr. Braun, do you have any
12 problems?

13 MR. BRAUN: No, that explanation is fine. There is no
14 dispute that this conspiracy, although it technically started
15 around 1990, that it evolved over time and that Mr. Jarvis did
16 take a break from it at some point in the mid '90s, so I think
17 the facts that are contained in the plea agreement are
18 accurate, but that that explanation is also accurate.

19 THE COURT: But let me make sure, Mr. Jarvis. Under
20 oath, then, you're confirming the factual basis as stated in
21 paragraph 8 on pages 3 and 4 of the plea agreement. Is that
22 correct?

23 MR. JARVIS: That's correct.

24 THE COURT: Let me ask Ms. Rosenstein, is that your
25 signature on behalf of Gary Mitchell in the plea agreement?

1 MS. ROSENSTEIN: Yes, it is.

2 THE COURT: Ms. Neal-Post, is that your signature on
3 the plea agreement?

4 MS. NEAL-POST: Yes, it is, Your Honor.

5 THE COURT: Mr. Braun, is that your signature?

6 MR. BRAUN: Yes, sir.

7 THE COURT: Let me review some of the provisions with
8 you, Mr. Jarvis, even though they are set in writing and you
9 have said that you read and understood all of them.

10 You have certain rights that are expressed in paragraph
11 2, and they include the right to plead not guilty to the
12 charges in the Superseding Indictment, and to have a trial by a
13 jury at which your lawyers would cross-examine the government's
14 witnesses, and you would have the right to confront those
15 witnesses at the trial. Do you understand all of that?

16 MR. JARVIS: Yes, I do, Your Honor.

17 THE COURT: Now, the government could not make you
18 testify at a trial. Whether you testify would be entirely up
19 to you. Do you understand that?

20 MR. JARVIS: Yes, I do.

21 THE COURT: The agreement says that you intend to plead
22 guilty to Counts 1 and 26 of the Superseding Indictment, and
23 with respect to Count 1, the maximum penalties are set forth in
24 paragraph 4, which are imprisonment of not less than 10 years
25 or more than life, a fine not to exceed \$4,000,000, a mandatory

1 term of supervised release of at least five years that could be
2 as as long as life, a mandatory special penalty of \$100, and
3 restitution as ordered by the court. Do you understand all of
4 that?

5 MR. JARVIS: Yes, I do.

6 THE COURT: Now, with respect to supervised release, if
7 you violated a condition of supervised release, that could
8 result in you being returned to prison. Do you understand
9 that?

10 MR. JARVIS: Yes, I do.

11 THE COURT: Paragraph 5 sets forth the maximum
12 penalties authorized by law for the offense charged in
13 Count 26. The maximum period of imprisonment on Count 26 is 20
14 years. The maximum fine is \$500,000 or twice the pecuniary
15 gain. There is a mandatory term of supervised release of not
16 longer than three years, a mandatory special penalty assessment
17 of \$100, and again, restitution could be ordered with respect
18 to Count 26. Do you understand that?

19 MR. JARVIS: Yes, I do, Your Honor.

20 THE COURT: Once more, I'll point out that, with
21 respect to the term of supervised release, if you violate a
22 condition, that could result in you being returned to prison.
23 Do you understand that?

24 MR. JARVIS: Yes.

25 THE COURT: Now, the most significant part of your

1 agreement is set forth in paragraph 6, and it states that you,
2 Mr. Jarvis, and the government have agreed under Rule
3 11(c)(1)(C) that the specific sentence in this case will be a
4 term of imprisonment of 168 months followed by a term of
5 supervised release of five years. Is that your agreement?

6 MR. JARVIS: Yes, it is, Your Honor.

7 THE COURT: Now, do you understand that if the
8 sentencing judge accepts the plea agreement, the sentencing
9 judge will have no choice but to sentence you to 168 months
10 imprisonment and five years of supervised release? The judge
11 won't have any discretion to do otherwise. Do you understand
12 that?

13 MR. JARVIS: I do now.

14 THE COURT: Do you have any questions about that?

15 MR. JARVIS: No, I don't.

16 THE COURT: Now, we've already reviewed paragraph 8,
17 and you've confirmed under oath that, as stated in the plea
18 agreement, that is the factual basis for your plea.

19 I understand that paragraph 9 has been stricken from
20 the agreement. Is that correct?

21 MR. BRAUN: That is correct. It was essentially
22 redundant with paragraph 7.

23 THE COURT: Okay.

24 MR. BRAUN: As far as the information that could be
25 provided to probation.

1 THE COURT: And have you initialed that deletion,
2 Mr. Jarvis?

3 MR. JARVIS: Yes.

4 THE COURT: Paragraph 10 states, Mr. Jarvis, that you
5 must provide the probation office with truthful, accurate and
6 complete information, and have you agreed to do that?

7 MR. JARVIS: I believe so.

8 THE COURT: Paragraph 11 is a lengthy provision
9 regarding forfeiture of assets. Have you read this carefully?

10 MR. JARVIS: I have. Yes.

11 THE COURT: And are you satisfied that this does
12 accurately represent all of the assets that you intend to
13 forfeit under the terms of the agreement?

14 MR. JARVIS: I'm satisfied with its accuracy.

15 THE COURT: Paragraph 12 states that you will assist
16 the United States in the forfeiture of these assets, and have
17 you agreed to do that?

18 MR. JARVIS: Yes, I will.

19 THE COURT: Paragraph 13 states that you agreed to
20 waive your right to notice of any forfeiture proceeding
21 involving that property, and have you agreed to do that?

22 MR. JARVIS: Yes, I have.

23 THE COURT: Paragraph 14 states that you have knowingly
24 and voluntarily waived your right to a jury trial with regard
25 to forfeiture of the property described in paragraph 11. Have

1 you agreed to do that?

2 MR. JARVIS: Yes, Your Honor.

3 THE COURT: Now, paragraph 15 was a matter that we
4 discussed at some length during the mediation agreement, and
5 that is that, in lieu of a money judgment, you agree to convey
6 the Mora real property into a trust for your children. Is that
7 your understanding of this?

8 MR. JARVIS: Yes, it is, and that has been done.

9 THE COURT: Is this satisfactory to you now?

10 MR. JARVIS: Yes, it is.

11 THE COURT: Paragraph 17 states that if Mr. Jarvis
12 fulfills his obligations under the agreement, the United States
13 will not bring additional charges against him arising out of
14 his conduct presently known to the United States, and that at
15 the time of sentencing, the United States will move to dismiss
16 the remaining counts of the Superseding Indictment as to
17 Mr. Jarvis, and that the United States will not seek to forfeit
18 any of his property presently known to the United States other
19 than the property described in paragraph 11, and any other
20 property in regard to which forfeiture proceedings have been
21 initiated previously or prior to the date of this agreement.
22 Is that the government's agreement?

23 MR. BRAUN: Yes, sir.

24 THE COURT: Now, paragraph 18 states that this
25 agreement is limited to the United States Attorney's Office for

1 the District of New Mexico, does not bind any other federal,
2 state or local agency and the prosecuting authorities. Does
3 that mean, for example, that, in the event the Internal Revenue
4 Service felt that there were taxes due, they could pursue that?

5 MR. BRAUN: That is correct.

6 THE COURT: And do you understand that, Mr. Jarvis?

7 MR. JARVIS: Yes, I do. I had a question about that.

8 THE COURT: Well, go ahead and ask it.

9 MR. JARVIS: If I may. Thank you. If that were the
10 case, would the government, prosecution's office, provide
11 information to the -- by signing this, am I going to get in
12 trouble with the IRS, too? Is that what the bottom line of
13 that is?

14 THE COURT: I don't know how to answer that. This is,
15 I guess, a public document, is it not?

16 MR. BRAUN: To my knowledge, there is no pending
17 investigation by the IRS into back taxes or anything of that
18 nature in relation to this case. And I don't see this plea
19 agreement changing that.

20 THE COURT: Any other questions?

21 MS. ROSENSTEIN: If I may, I'm assuming that means that
22 your office does not intend to discuss this with the IRS or
23 anything of that nature. I mean, if they call you, I'm sure
24 you'll talk to them, but you're not going to initiate --

25 MR. BRAUN: We had no intention of referring this to

1 the IRS. The IRS was involved in the investigation of the
2 criminal charges in this case, so I imagine if they intended to
3 pursue it, they would have started already.

4 THE COURT: Any other questions about that?

5 MR. JARVIS: I'm satisfied with that, Your Honor.

6 THE COURT: Paragraph 19 states that you intend to
7 enter your pleas voluntarily and without threats or force. Has
8 anyone threatened you or tried to force you to enter into this
9 plea agreement or to plead guilty?

10 MR. JARVIS: I have a hard time answering that
11 question, Your Honor. It's the definition of the word
12 "threat," is one I have trouble with. Ms. Rosenstein and I
13 went over this for quite a period of time, and --

14 THE COURT: Well, let me be very candid with you. I
15 cannot accept your plea, nor would any other judge accept your
16 pleas of guilty, if they resulted from duress, threats, and for
17 any reason were not made voluntarily by you.

18 MR. JARVIS: Well, I've signed the agreement, and no
19 one has threatened me, if that answers the question.

20 THE COURT: Well, are you doing this of your own free
21 will, or are you doing it out of some sense of fear, duress or
22 other reasons?

23 MR. JARVIS: Well, I've been told that if I don't, I go
24 to trial, I would be looking at 20 years or more instead of 14
25 years, which I accepted as most likely being a true fact. So I

1 don't want to have this point hold up the provision at all, but
2 I'm not doing this because I want to, because I like it. I
3 don't feel right about it, and I regret it, but I also accept
4 the responsibility of my actions, and so I've signed the plea,
5 and I will accept it as it is.

6 THE COURT: Well, I'm not sure exactly what you're
7 saying. If it's a matter of balancing your risks of a longer
8 sentence through conviction at trial and effecting a compromise
9 of that risk, that's one thing. If you are telling me that
10 you're being pressed or forced into this by someone else and
11 don't want to agree with that, that's yet another matter.

12 MS. ROSENSTEIN: May I state something for the record,
13 Your Honor?

14 THE COURT: Go ahead.

15 MS. ROSENSTEIN: There are two things. Number one, I
16 believe when Mr. Jarvis indicated that it depends on the
17 definition of threat. Obviously, as experienced counsel,
18 Mr. Mitchell, Ms. Neal-Post and myself have all indicated to
19 Mr. Jarvis the various options that he has at this point, and
20 we all are very much, very well aware of the guidelines, what a
21 guideline sentence would be, which we believe would be in
22 excess of the agreed-upon amount; and certainly, when one goes
23 to trial, one does not get the benefit of any kind of
24 acceptance of responsibility and other potentially mitigating
25 factors. And I think that's what Mr. Jarvis is talking about.

1 I think that it's the former option that the court just
2 described, that he's agreeing to a compromise. Even though he
3 doesn't like it, and is not happy about it, he's accepting the
4 compromise because he recognizes the reality of his situation,
5 the facts that are in the discovery, what might come out at
6 trial, and as well as the benefit that he receives in terms of
7 the trust fund for his children, the forfeiture issues.

8 And there is one other thing that's not part of this,
9 but I just want to state for the record that Mr. Kotz has
10 agreed with counsel for Mr. Jarvis' ex-wife, the mother of his
11 two older children, to attempt a settlement with regard to the
12 home that she lives in with their son, and they have agreed
13 that it will be a good faith negotiation for settlement, and
14 that at least one of the goals is that the family remain in the
15 home. That's certainly not the only goal, but at any rate,
16 that was another thing, and I wanted to put that on the record,
17 because that was another reason that I believe Mr. Jarvis has
18 agreed to this compromise and to the waiver of his rights.

19 He feels very strongly about waiving his rights, and
20 he's agreeing to do so because I believe that he recognizes the
21 reality of his situation and this case, and understands that
22 this is the best possible situation that he could get.

23 If I'm wrong, please tell me.

24 THE COURT: Well, the issue of his former wife's house
25 in Santa Fe is not addressed in writing in this agreement, is

1 it?

2 MS. ROSENSTEIN: No.

3 MR. BRAUN: No, and that's not part of this plea
4 agreement. We've made that clear to Ms. Rosenstein, that we
5 don't want that to be part of the plea negotiations in this
6 case; but that being said, it should be put on the record, and
7 I'm glad that she did, that we have agreed to negotiate in good
8 faith towards a reasonable settlement in that case. And so
9 we're putting that on the record here.

10 THE COURT: Well, looking at the language of paragraph
11 19 of the plea agreement, Mr. Jarvis is representing here that
12 his plea is freely and voluntarily made, and not the result of
13 force or threats or of promises apart from those set forth in
14 the plea agreement. Now, is there a promise relating to this
15 house or not?

16 MS. ROSENSTEIN: No, there is no promise or commitment
17 other than that the parties will negotiate in good faith toward
18 a settlement.

19 THE COURT: Is that your understanding, Mr. Jarvis?

20 MR. JARVIS: Yes. Yes, it is, Your Honor.

21 THE COURT: Well, look carefully at the language of
22 paragraph 19. The sentence is very short. It says you agree
23 and represent that your plea of guilty is freely and
24 voluntarily made, and it is not the result of force or threats
25 or of promises apart from those set forth in the agreement. Is

1 that correct or not?

2 MR. JARVIS: That's correct.

3 THE COURT: One of the things that I didn't see in this
4 agreement that sometimes appears in others is the matter of
5 payment of the special penalty assessment. I told him that
6 that's a consequence.

7 MR. BRAUN: Right, but, no, it is not included in there
8 that he has to pay that immediately, but there are procedures
9 in place for the payment of special penalty assessments. And
10 that, of course, is required by law.

11 MS. ROSENSTEIN: Yes, and Mr. Jarvis is aware of the
12 \$200 mandatory penalty assessment, \$100 for each count.

13 THE COURT: Is that correct, Mr. Jarvis?

14 MR. JARVIS: Yes, Your Honor, it is listed there in
15 number 4 and number 5, it's got it, and I agree with that.

16 THE COURT: Now, if I accept your plea agreement -- not
17 your plea agreement. If I accept your pleas of guilty to
18 Counts 1 and 26, it will be the same as though you had been
19 convicted of the felony crimes charged in Count 1 and in
20 Count 26. Do you understand that?

21 MR. JARVIS: Yes, sir.

22 THE COURT: With respect to sentencing, as I indicated,
23 if the sentencing judge accepts your plea agreement, the
24 sentencing judge will have to impose a sentence of 168 months
25 imprisonment and a five-year term of supervised release. The

1 only reduction off of the length of the sentence for good time
2 credit that you earn in prison is 15 percent or 54 days per
3 year. Do you understand that?

4 MR. JARVIS: Yes, and I have a question about that.

5 THE COURT: Go ahead.

6 MR. JARVIS: Would that apply to the entire 168 months.

7 THE COURT: Let me ask Mr. Braun. He's been in federal
8 custody for quite some time, and I assume that he'll qualify to
9 receive good time credit for the time he's already spent in
10 federal custody. Do you know the answer?

11 MR. BRAUN: I don't.

12 MS. ROSENSTEIN: It is my experience, Your Honor,
13 that -- and I think there is even case law, although I don't
14 have it at my fingertips, that the good time credit applies to
15 the entire length of the sentence, and I can contact the BOP.
16 Maybe probation is still here. No. But I believe that he is
17 entitled to good time for the entire 168 months whenever,
18 wherever, it was served. That's my understanding.

19 THE COURT: Is that a satisfactory answer for you?

20 MR. JARVIS: Yes, for now, that will work.

21 THE COURT: Now, Mr. Jarvis, do you understand fully
22 the consequences of pleading guilty to the charges in Counts 1
23 and 26?

24 MR. JARVIS: In reference to the 168 months?

25 THE COURT: In reference to all of the provisions of

1 the plea agreement.

2 MR. JARVIS: I believe so.

3 THE COURT: Well, do you have any questions you want to
4 ask?

5 MR. JARVIS: Well, I just think that 14 years is an
6 awful long time for first offense, nonviolent, marijuana-
7 related charges, Your Honor. I would like to not have to be
8 sentenced to that long of time. The time I've been in jail
9 already, my life has been ruined, and there will be
10 consequences after the 168 months that aren't addressed in this
11 agreement, and I don't know if they have been considered by the
12 government.

13 For example, my credit rating, which was in the 800s
14 prior to my arrest, will be permanently tarnished. My ability
15 to travel to foreign countries, even if I am able to regain
16 possession of a passport, will be limited. Canada won't let
17 you in if you have been convicted of a marijuana offense, even
18 though marijuana has been legalized to grow hemp in Canada now.
19 And I've seen the trends of the -- around the country,
20 including this state right here, just recently, legalized
21 medical marijuana in the recent elections. Michigan was added
22 to that list, making a total of 14 states that have legalized
23 the possession of marijuana.

24 I was talking to my older sister in Hawaii on the phone
25 a couple of weeks ago. She said she was looking out the window

1 at her marijuana plants growing in the garden which she's doing
2 legally, growing marijuana, and her younger brother is sitting
3 in jail with chains on for the same product.

4 I personally don't think that I should have to do that
5 much time for a substance that I don't feel is harmful. There
6 is no hard drugs involved in this case. There is no crime of
7 violence, and this is my first offense. I'll be 60 years old
8 in 14 months, and to sign up for 168 months in jail for pot to
9 me is very, very hard to accept that that is justice. I don't
10 believe that justice is being served here today, Your Honor,
11 and that's my point of view.

12 Hopefully, that's not too long of an answer.

13 THE COURT: No, I understand, but I think United States
14 Congress has a different view of marijuana than you do,
15 obviously. Independent of that, we need to know whether,
16 despite your beliefs about it, you're willing to proceed to
17 enter pleas of guilty and do so voluntarily.

18 MR. JARVIS: Well, I'm asking at this moment if it is
19 at all possible if the government would consider a slight
20 reduction in that sentence.

21 Is there any possibility that we could go down to six
22 months or a year on the sentence at this time?

23 MR. BRAUN: Your Honor, we have negotiated this plea
24 agreement, and that's all we're authorized to proceed with.

25 THE COURT: I should probably state on the record that

1 I was not involved in the final aspect of the agreement between
2 the government and Mr. Jarvis. I participated in the
3 mediation, exchanged, and basically served as a courier, taking
4 information from one side to the other, and advising both sides
5 about where things stand, but I was not involved in the final
6 agreement.

7 You understand that, do you not, Mr. Jarvis?

8 MR. JARVIS: Yes, I do.

9 THE COURT: Well, do you wish to proceed to enter pleas
10 of guilty, or would you rather not?

11 MR. JARVIS: Well, I'll plead guilty, and I just wanted
12 to make the point that I don't feel right about it, and I think
13 it's time that these long sentences for marijuana charges are
14 reduced. I don't think it is right that people should get this
15 much time for pot. I just don't feel right about it.

16 THE COURT: Okay. But you intend to go ahead and plead
17 guilty despite your beliefs?

18 MR. JARVIS: Yes.

19 THE COURT: Now, let me make sure that you understand
20 the charges to which you're pleading guilty. Have you read the
21 Superseding Indictment?

22 MR. JARVIS: Yes, sir.

23 THE COURT: And have you discussed in particular Count
24 1 and Count 26 with your attorneys?

25 MR. JARVIS: Yes, sir.

1 THE COURT: Do you fully understand the charges that
2 are made against you in Count 1 and in Count 26?

3 MR. JARVIS: Yes.

4 THE COURT: Let me ask Mr. Jarvis' counsel, do you
5 believe it is in Mr. Jarvis' best interest to enter pleas of
6 guilty to the charges in Count 1 and Count 26 of the
7 Superseding Indictment?

8 MS. ROSENSTEIN: Yes, sir.

9 THE COURT: Now, will you explain on the record in more
10 detail why you think it is in his best interest?

11 MS. ROSENSTEIN: Well, I would first say that I don't
12 necessarily disagree with a lot of the things that Mr. Jarvis
13 said, but I recognize that we all -- this is a country of law,
14 and the law is that marijuana and distribution thereof is
15 illegal.

16 It's my understanding that there is, I guess I can call
17 it, an enormous amount of evidence that has been accumulated by
18 the government against Mr. Jarvis; that there would be a number
19 of individuals who would would be testifying with regard to
20 their direct contact with Mr. Jarvis in connection with this
21 particular conspiracy, as well as the money laundering, which
22 is part of it.

23 I have reviewed the guidelines, and very frankly, I
24 think that pursuant to the guidelines, which I recognize are to
25 be considered reasonable at least by the Court of Appeals, and

1 certainly something that the government adheres to, and many
2 courts sentence pursuant to, I believe that he is facing a
3 significantly greater period of time should he be convicted at
4 trial. I think the likelihood of conviction is fairly
5 substantial, and consequently, and after the negotiations that
6 I've been involved in in the short period of time, I believe
7 that this is the best we can do, and I believe, therefore, that
8 it is definitely in his interest to accept the plea. That's
9 what we've been discussing for the last three or four days.

10 THE COURT: Mr. Jarvis, how do you plead to the charge
11 in Count 1 of the Superseding Indictment? Guilty or not
12 guilty?

13 MR. JARVIS: Guilty, Your Honor.

14 THE COURT: And how do you plead to the charge in
15 Count 26 of the Superseding Indictment? Guilty or not guilty?

16 MR. JARVIS: Guilty, Your Honor.

17 THE COURT: It is my finding that the defendant, Dana
18 Jarvis, knowingly, voluntarily and intelligently entered pleas
19 of guilty to the charges in Count 1 and Count 26 of the
20 Superseding Indictment. At this time, I will accept your pleas
21 of guilty as being voluntarily and intelligently made.
22 However, I am not accepting the terms of the plea agreement,
23 and that will be deferred for consideration by the judge who
24 sentences you. Do you understand that the sentencing judge may
25 reject the plea agreement and decide not to accept it? Do you

1 understand that?

2 MR. JARVIS: Yes, I do.

3 THE COURT: You'll be required to meet with the
4 probation officer to give information that will be included in
5 your Presentence Report. You have the right to have your
6 attorneys with you when you are interviewed. After your report
7 is prepared, you'll have a right to read your Presentence
8 Report and to discuss it with your attorneys. If you find any
9 factual statements in the report that you believe are not
10 correct, you can point that out to the probation officer who
11 authors the report. You can also ask for a hearing in court at
12 which you can present evidence as to facts you think should be
13 in your report. Do you understand that?

14 MR. JARVIS: Yes, I do, Your Honor.

15 THE COURT: Normally, sentencing is scheduled about 75
16 days after the change of plea hearing, so you can expect the
17 sentencing date to be roughly 75 days from now.

18 MS. ROSENSTEIN: Your Honor, we have actually -- all
19 parties have agreed to an expedited PSR. I spoke with
20 Mr. Braun and Mr. Kotz to the probation department, and they
21 have agreed, they have indicated that they believe they can
22 have the report done in 30 days as opposed to the usual.

23 THE COURT: Well, you'll just have to check with Judge
24 Herrera, who I assume will be the sentencing judge, about a
25 date for sentencing.

1 MS. ROSENSTEIN: Yes. According to her clerk, she will
2 be, yes.

3 THE COURT: All right. Let me ask Mr. Braun or Mr.
4 Kotz, anything else you need to bring up today on behalf of the
5 government?

6 MR. BRAUN: No, Your Honor.

7 THE COURT: And Ms. Rosenstein and Ms. Neal-Post,
8 anything else?

9 MS. ROSENSTEIN: No, sir.

10 MS. NEAL-POST: No.

11 THE COURT: Court's in recess.

12 (Court recessed at 4:29 p.m.)

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1 C-E-R-T-I-F-I-C-A-T-E

2 UNITED STATES OF AMERICA

3 DISTRICT OF NEW MEXICO

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5 I, John De La Rosa, RPR, CCR, Official Court Reporter for
6 the State of New Mexico, do hereby certify that the foregoing
7 pages constitute a true transcript of proceedings had before
8 the said Court held in the City of Albuquerque, New Mexico, in
9 the matter therein stated.

10 In testimony whereof, I have hereunto set my hand on this
11 6th day of May, 2009.

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